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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/549,841	11/25/2005	Michael Burmester	H01.2-12068	3686

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EXAMINER	
MORAN, KATHERINE M	

ART UNIT	PAPER NUMBER
3765	

MAIL DATE	DELIVERY MODE
09/21/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/549,841	BURMESTER, MICHAEL	
	Examiner	Art Unit	
	Katherine Moran	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 June 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *13 June 2007* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

Applicant's amendment of 6/13/07 has been received. Claims 1, 5, 8, and 12 are amended and claims 1-12 are pending.

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Drawings

2. The drawings were received on 6/13/07. These drawings are accepted.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-5 and 9-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Fay (U.S. 4,192,017). Fay discloses the invention as claimed. Fay teaches a hat part 10 or 14 and visor part 12 made of a plastic material. With regard to the performance properties of the claimed plastic as recited in claims 1 and 9-11, Applicant's claims recite a plastic hat part. Thus, any hat part formed from plastic is expected to perform in

the same way as outlined by claims 1, 10, and 11. Fay teaches that hat part 14 is formed from flexible polyurethane (col.2, lines 46-48). By definition, thermoplastic urethane based on polyether or polyester is known as polyurethane material (as disclosed in Applicant's specification, pg.3, lines 1-2). The hat part is provided as a visor part 12 or hat flap 10 which has a portion resting against the head of a person bearing the hat and a distant portion, with a hat material 18, 20, 26 attached to the resting portion. The plastic material 12 is partially or completely transparent. Regarding the recitation of "plastic material is injection moulded", the method by which the material is formed is not given patentable weight in an apparatus claim. Fay's plastic material is capable of being injection moulded. The hat part could be deformed about the first temperature to a desired shape by a user.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 6, 7, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fay in view of Bree (U.S. 4,767,647). Fay discloses the invention substantially as claimed. However, Fay doesn't teach plastic material that is partially or completely metallised, or foils completely or partially injected into the plastic material. Fay's hat part includes a decorative logo 32 which may be imprinted on the visor's surface. It is

common in the art to provide hat parts with emblems to achieve a desired aesthetic effect. Bree teaches an emblem formed from a decorative, embossed foil 18 that is injected with a plastic material 16. The embossed foil would result in an altered foil surface that is structurally equivalent to the surface of an imprinted foil. The process of manipulating the foil does not carry patentable significance in interpretation of an apparatus claim. Thus, whether the foil is imprinted or embossed, the resulting foil structure is the same. Therefore, it would have been obvious to provide the emblem of Bree to Fay's hat part since the emblem is easily manufactured and lends desired optical effects to the hat.

7. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fay in view of Youmans et al (Youman, U.S. 6,615,409). Fay discloses the invention substantially as claimed. However, Fay doesn't teach pigments are incorporated into the plastic material. Youmans teaches that it is known to provide numerous plastic lenses, including visors, with pigments incorporated into the plastic material (col.2, lines 9-11 and col.5, line 1-6). Therefore, it would have been obvious to one of ordinary skill in the art to provide Fay's visor with the pigments as taught by Youmans in order to provide a high contrast resolution lens.

Response to Arguments

8. Applicant's arguments have been considered. Applicant submits that the decision rendered in In re Glaug supports Applicant's assertion that the performance characteristics associated with the plastic hat part recited in claim 1 should be given

patentable weight. It is noted that In re Glaug is concerned with claim limitations drawn to a process of manufacture. The present invention is presented in a product or apparatus claim. Accordingly, the claim is interpreted based upon its structural elements and not upon how the product is intended to be used or made. In order for the recited performance characteristics to be given patentable weight, these intended performance characteristics must result in a structural difference between the claimed invention and the structure disclosed by the prior art. The Office does not have the facilities to perform testing on a claimed device, and the performance characteristics of the device do not carry patentable weight in an apparatus claim. Since Fay teaches the claimed structure, Fay meets the claims as outlined above. Applicant has not pointed to specific deficiencies in the structures of the remaining prior art rejections.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications should be directed to Primary Examiner Katherine Moran at (571) 272-4990. The examiner can be reached on Monday-Thursday from 8:30 am to 6:00 pm, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch, may be reached at (571) 272-4996. The official and after final fax number for the organization where this application is assigned is (571) 273-8300. General information regarding this application may be obtained by contacting the Group Receptionist at (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kmm

September 18, 2007

Katherine Moran

Primary Examiner, AU 3765